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COMMISSION OPINION

of 27.8.2021

pursuant to Article 20(5) of Regulation (EU) No 2019/943 on the implementation plan of France

(ONLY THE FRENCH VERSION IS AUTHENTIC)

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I. PROCEDURE

On 28 April 2021, the Commission received an implementation plan from France prepared pursuant to Article 20(3) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity[1] (hereinafter “Electricity Regulation). Article 20(3) of the Electricity Regulation requires Member States with adequacy concerns to set out measures to eliminate regulatory distortions or market failures on their markets in an implementation plan.

By decision of 8 November 2016 the European Commission authorised under Article 107 (3) of the Treaty on the Functioning of the European Union, for a period of 10 years, the French country-wide capacity mechanism[2]. The current implementation plan is provided in the context of Article 21(6) of the Electricity Regulation that provides that where a Member State applies a capacity mechanism, it must review it and ensure that no new contracts are concluded under that mechanism where no resource adequacy concern has been identified[3] or the implementation plan referred to in Article 20 (3) has not received an opinion by the Commission.

Pursuant to Article 20 (5) of the Electricity Regulation, the Commission is required to issue an opinion on whether the proposed measures and the timeline for their adoption are sufficient to eliminate the regulatory distortions or market failures.

II. DESCRIPTION OF THE IMPLEMENTATION PLAN

In its implementation plan, the French authorities give a general presentation of the national electricity system and of the French market, explain why they consider that a capacity mechanism is still needed and outline the measures that they intend to implement under Article 20(3) of the Electricity Regulation. In the following, the Commission does not take a

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1 Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54–124

2 Commission Decision (EU) 2017/503 of 8 November 2016 on State aid scheme SA.39621 2015/C , OJ L 83, 29.3.2017, p. 116–156

3 By both the European resource adequacy assessment and the national resource adequacy assessment or, in the absence of a national resource adequacy assessment, by the European resource adequacy assessment.

position on the alleged necessity for a capacity mechanism[4], but provides an assessment of those measures that directly relate to the required actions in Article 20 (3) of the Electricity Regulation.

1. General wholesale market conditions

The French authorities indicate that there is neither a maximum nor a minimum limit to the wholesale electricity price in France, in line with Article 10 of the Electricity Regulation. They note that the only limits applied are the harmonised maximum and minimum clearing prices for single day-ahead and intraday markets, in accordance with Articles 41(1) and 54(1) of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management2 (hereafter 'CACM Guideline')[5].

However, the French wholesale market is very much structured around a system of regulated access for competitors to nuclear power from EDF's existing nuclear power stations (the "ARENH" scheme) up to a ceiling of 100 terawatt-hours per year (TWh/y), which was introduced in the context of the Law NOME. This scheme comprises a regulated wholesale price of EUR 42 per megawatt-hours (MWh). The implementation plan stresses the positive role that ARENH has played in fostering retail price competition. The Commission State aid decision[6] foresees that ARENH is a transitory mechanism that will run until the end of 2025. The French authorities are currently consulting on the wholesale market conditions that could replace the ARENH; pending these consultations, no measures are presented in the implementation plan.

In the framework of the NOME, a capacity mechanism was also foreseen to reinforce security of supply. Advancing empirical data on the continued justification of a capacity mechanism, the French authorities commit to 1) update, by the end of the first quarter of 2022 and following a proposal of the regulatory authority, the reliability standard indicating the necessary level of security of supply, 2) publish and communicate to the Commission, in the course of 2021, a report by the French transmission system operator RTE setting out the lessons to be learned from the first years of operation of the French capacity mechanism and, if appropriate, submit proposals for developments, and 3) open the French capacity mechanism gradually to foreign capacity.

As mentioned above, in this opinion the Commission does not take a position on the alleged necessity for a capacity mechanism or the design thereof. The first measure is a legal requirement under Article 25 of the Electricity Regulation. The third measure is commented upon in Section III.3 regarding the measures proposed by the French authorities in relation to cross-border capacities.

[4] The assessment of the necessity of such a mechanism is outside the scope of this opinion and rather relates to the provisions in Chapter IV of the Electricity Regulation concerning adequacy assessment.

[5] Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, 25.7.2015, OJ, L 197, p.24

[6] Commission Decision of 12 June 2012 on State aid SA.21918 (C 17/07) implemented by France - Regulated electricity tariffs in France, OJ C 398, 22.12.2012, p. 10–30

2. Balancing markets

According to the implementation plan, the French balancing mechanism is a self-dispatch system, where market parties are responsible for their imbalances through their balance responsible party, and can adjust their position until one hour before real time. The French transmission system operator RTE selects and activates balancing bids (manual Frequency Restoration Reserve and Replacement Reserve) until real time.

All generation units connected to the TSO grid must submit their available generation on the balancing market; generation units connected to the distribution grid and all DSR actors can submit their bids. Complementary to these *ex-ante* contracted reserves, market players can submit energy-only bids, which allow them to value their flexibility outside of any ex-ante contracting scheme. With the information received, RTE makes forecasts and can activate balancing bids accordingly from ex-ante until real time.

The plan describes the participation of RTE in the European platform for imbalance netting (International Grid Control Cooperation, in 2016), the European initiatives for joint procurement of Frequency Containment Reserve resources (in 2017), the European platform for the exchange of balancing energy from replacement reserve (TERRE, in 2020) and, since 2017, in the development of the European platform for the exchange of balancing energy from Frequency Restoration Reserve with manual activation (MARI) and the European platform for the exchange of balancing energy from Frequency Restoration Reserve with automatic activation (PICASSO) according to Articles 19, 20, 21 and 22 of Commission Regulation 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing[7] ('hereafter Balancing Guideline').

In this context, the French authorities take the following commitments:

– Connection of RTE to the European Platform PICASSO in October 2021
– Connection of RTE to the European platform MARI in 2024
– Implementation of a 15-minute Imbalance Settlement Period (ISP) in 2025

According to Article 20(3) of the Electricity Regulation, in their implementation plan Member States must consider a shortage pricing function for balancing energy. The French authorities indicate that implementing a scarcity pricing for balancing energy is not an appropriate measure, and detail their views on the uncertainties of the ability of such a scarcity pricing to trigger sufficient investment to ensure compliance with the security of supply criterion.

3. Interconnection capacity and cross-border trade

The French electricity transmission network is currently interconnected with six countries (United Kingdom, Belgium, Germany, Italy, Spain and Switzerland). France's overall interconnection capacity in 2019 amounts to 17,4 GW for export and 12,5 GW for import. However, the capacity actually used on average is lower (in the range of 8 GW to 10 GW).

[7] Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, OJ L 312, 28.11.2017, p. 6–53

Pursuant to Article 16(8) of the Electricity Regulation, transmission system operators have the obligation to make available for trade at least 70 % of cross-border capacity. RTE requested a derogation in 2020 under Article 16(9) of the Electricity Regulation for three of the four capacity calculation coordination regions of which it is part: Central Western Europe (corresponding to interconnections with Belgium and Germany), Northern Italy (corresponding to interconnections with Italy), and South-West Europe (corresponding to interconnections with Spain). RTE, however, committed to respect minimum levels of cross-border capacity made available for trade, in line with historically observed levels (respectively 20 % in Central Western Europe and 70 % for 70% of the time in Northern Italy and South-West Europe). This derogation has not been extended in 2021 for Central Western Europe and Northern Italy, for South-West Europe there is still a derogation for 2021.

In December 2020 the French regulatory authority published a report monitoring the cross-border capacity in the first half of 2020. It notes that that the levels of cross-border capacity provided by RTE vary between 10% and 200% of the physical capacity of the network elements, with an average of around 75% for Central Western Europe, 90% for Northern Italy and 70% for South West Europe. It is stated that RTE complies with the obligation to provide 70 % of cross-border capacity in situations where the French regulatory authority deems it particularly necessary for cross-border trade, in particular where there is no price convergence between countries, at 91 % for Central Western Europe, 99 % for Northern Italy and 83 % for South West Europe.

France supports the increase of cross-border capacity through network developments; several projects are under construction. In this context, the French authorities commit to:

– Complete three new electricity interconnections and one reinforcement project, with Italy (Savoie-Piemont in 2021), Great Britain (ElecLink in 2022, IFA2 in 2021) and Belgium (Avelin-Avelgem in 2022).
– Complete two other PCI-labelled projects, launched with the support of national governments and the Connecting Europe Facility: Bay of Biscay with Spain and Celtic with Ireland.
– Further study projects to reinforce interconnections with Germany.

Overall, the transmission system operator RTE foresees a doubling of French interconnection capacity by 2035.

Still on cross-border capacities, the French authorities commit to replace the existing simplified procedure for the participation of interconnections by an explicit procedure for the participation of cross-border capacities in the French capacity mechanism by the end of 2022.

4. Demand side response, storage, self-consumption and energy efficiency

Demand side response

France has set the following national objectives for demand side response: 4.5 GW in 2023, 6.5 GW in 2028. In 2020, the available demand side response capacity was 3.2 GW, not reaching the national objective.

The roll-out of smart meters is expected to be completed in 2021.

Following reforms of the French electricity market, demand side response ("DSR") can participate in all market mechanisms, and compete with generation, namely in the balancing mechanism operated by RTE and to the reserve procurement, the wholesale electricity market through a specific mechanism ("NEBEF") and in the capacity mechanism.

When a DSR bid is activated, meaning that there is a transfer of energy between market players on the wholesale market or on balancing, a financial compensation is paid to the supplier to compensate the corresponding quantity of electricity.

These market design features for integrating DSR are complemented by a specific State aid scheme[8] setting a call for tender open to DSR, and leading to a complementary remuneration to the capacity mechanism, for the selected capacity. To ensure proportionality, the scheme includes a cap on the remuneration and excludes the most expensive offers, if the auction is not sufficiently competitive. The French authorities consider that the scheme has proven insufficiently attractive for DSR players.

Accordingly, the French authorities propose to reinforce mechanisms to support DSR through:

– An intended revision of the existing state aid scheme for demand side, which will be notified to the Commission in the course of 2021. This revision would aim to increase the caps on the financial support, allow multi-year contracts for small-size units and facilitate the conditions under which selected volumes can participate in all markets, including the reserves operated by the TSO.

– Measures targeting implicit DSR developed by suppliers, by launching a pilot tender in the course of 2021 with a view to promoting the emergence of capacities *"à pointe mobile*" (dynamic pricing).

The French authorities also propose to revise the current obligation in the DSR support scheme for selected DSR parties to place bids for activation under a price cap, with the objective to remove the obligation and replace it by a penalty-based system.

Storage

France counts 5 GW of pumped storage and 300 MW of batteries are being developed.

The national regulatory authority has developed a roadmap to further develop storage, and has in particular identified the need to facilitate the connection of storage connection to the electricity system, to ensure that storage can provide services, and to improve price signals. In this regard, the French authorities propose the following measures:

– Develop specific procedures for storage connection requests to network operators in 2021;

– Take into account the benefits brought by storage when computing the grid connection costs and related cost sharing for the connection of renewables and storage installations.

Storage can participate in ancillary services:

[8] Commission decision of 7 February 2018 in proceedings SA.48490, OJ C 256, 20 July 2018

– For frequency containment reserve, the shift to calls for tenders and the participation in the European platform in 2019 has enhanced the participation of storage, in particular of batteries.

– For the frequency restoration reserve with automatic activation aFRR), national rules prescribe volumes for each connected generation unit, and limit the participation of storage outside of pumped storage. The shift to calls for tenders and the participation in the European platform for frequency restoration reserve with automatic activation (PICASSO) is expected to improve the situation.

Synchronous storage units (pumped storage) are obliged to participate in balancing; however, this is not possible for asynchronous storage units (like batteries), but a three-stage plan is foreseen to integrate the latter.

The French authorities propose the following measures to improve storage participation in ancillary services and balancing procurement:

– Improve the valorisation of injection and withdrawals from storage units in the balancing mechanism from the fourth quarter of 2021;

– Facilitate the participation of storage in the balancing mechanisms, through the aggregation of storage with generation or consumption units for balancing bids.

– Set a call for tenders for the secondary reserve (aFRR) from October 2021, to facilitate the participation of storage units.

Self-consumption

France has set a national objective of 200 000 PV sites in self-consumption by 2023, and is progressing well towards this target. France has put in place a legislative framework for individual and collective self-consumption within the same building. This framework also allows for extended collective self-consumption and electricity sharing within a radius of one kilometre for urban areas and ten kilometres in rural areas, facilitates the deployment of smart meters for collective self-consumption, sets the ground for a specific grid tariff for self-consumption and facilitates the operational conditions for small self-consumers.

This framework is complemented by a support mechanisms through calls for tenders.

The French authorities commit to take the following measures:

– Extend the scope of collective self-consumption to the whole distribution grid (low and medium voltage level);

– Enable self-consumers benefiting from a support scheme to also benefit from guarantees of origin for self-consumed renewable electricity;

– Enable collective self-consumption operations to participate in support schemes.

Energy efficiency

The French authorities recall the main measures that underpin its contribution to the European target of reducing energy consumption by at least 32.5 % in 2030 compared to a trend baseline scenario. These include in particular the energy saving certificates scheme. Reference is also made to the European rules on the eco-design of energy-related products and the energy labelling of energy-related products, and to the long-term building renovation strategy of France. No specific measures towards the aim of Article 20(3) are singled out.

5. Retail markets and regulated prices

In accordance with Article 5 of Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity[9] (hereinafter "Electricity Directive") Directive, only household customers and microenterprises are eligible to regulated electricity prices, under certain conditions. Around 70% of household customers are still supplied at regulated prices while the number of customers that have opted for a free market (non-regulated) offer has increased by more than 100 000 each month since the end of 2018. The number of suppliers has increased, as have the market shares of the incumbent's competitors.

The vast majority of "free market" offers are priced lower than the regulated prices, and EDF is allowed to make such offers alongside its regulated retail prices.

The plan quotes the national regulatory authority that indicated that as the regulated retail prices cover costs and are contestable by the competitors of EDF, they do not constitute by their nature an obstacle to the good functioning of the retail market. The plan also refer to the importance attached to protecting small customers against price volatility. No measures are proposed in the implementation plan to phase out or reduce the scope of regulated retail prices or to increase competition in the retail market.

[9] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, OJ L 158, 14.6.2019, p. 125–199

III. COMMENTS

As mentioned above, in this Opinion the Commission gives its views on the proposed measures in the implementation plan. As a general remark, the Commission notes that measures that essentially confirm that France complies or will comply with EU electricity market design rules will obviously contribute to addressing market failures that are at the origin of any adequacy concerns, but much will depend on how and when the measures are implemented.

It is particularly important to implement measures that ensure that market signals are not distorted and that prices adequately reflect scarcity in order to drive investments to achieve security of supply.

1. General wholesale market conditions

Price caps - day ahead and intraday markets

The Commission welcomes that France applies the harmonised maximum and minimum clearing prices for single day-ahead and intraday coupling in accordance with Articles 41(1) and 54(1) of the CACM Guideline.

Wholesale market conditions

The wholesale market is characterised by a high concentration and limited liquidity, and market players lack visibility due to perceived uncertainty around the future role of nuclear in the electricity landscape[10].

The Commission notes that pending consultations on the wholesale market conditions that could replace the ARENH, no definitive measures can be provided. However, the Commission stresses that while the ARENH has undoubtedly facilitated retail price competition, it has not enabled investment in generation, which is a prerequisite for creating more wholesale competition and sustainable retail competition. In this context, the Commission notes that France has failed to tender the expired hydropower concessions exploited by the dominant operator (EDF)[11] , although such tenders would increase wholesale competition and spur investment in this renewable electricity source.

The Commission invites the French authorities to pursue their review of the wholesale market conditions, including a detailed assessment of the reasons limiting further investment in generation, in particular renewable electricity, as France is set to miss its 2020 target for renewable energy. The Commission notes that the Law NOME foresees a review every five years, including of the impact of ARENH on the wholesale market.

Whilst holding a dominant position is not an abuse under EU law and there is no obligation to reduce the market share of the vertically integrated dominant operator in either generation or

[10] On the one hand, France has indicated in its National Energy and Climate Plan that it will reduce the share of nuclear in its energy mix to 50% by 2035 (though no detailed schedule for plant closure has been published yet), and on the other hand, investment in several new EPR reactors is under consideration.

[11] Letter of Formal Notice of 23 October 2015 in case AT. 40276 – French hydropower concessions (SG-Greffe (2015)D/12032), and letter of Formal Notice of 8 March 2019 in case 2018/2378 (SG-Greffe (2019) D/3823).

supply, a level playing field between the incumbent and national and cross-border competitors is required for investment in flexible assets and for the latter to receive adequate incentives to contribute to resource adequacy. Establishing such a level playing field requires that the State does not enact or maintain in force measures which result in the maintenance, strengthening or extension over another market of the dominant position held by public undertakings or undertakings to which they grant special or exclusive rights.[12] This requirement applies in particular to the hydropower concessions exploited by EDF.

The Commission stresses the importance that France, in line with its commitment taken in the plan, resubmits its implementation plan to the Commission once reforms on the wholesale market conditions have been decided.

2. Balancing markets

The Commission notes that France operates a "proactive" balancing model where the transmission system operator plays an important role incorporating a forecast vision based on information sent by market participants, the identified imbalance and forecasting models, including demand forecasting.

RTE uses specific products for the management of system constraints (in compliance with operational limits related to physical flows, maintenance of balancing reserve levels, compliance with margin levels required nationally), or where the standard products do not meet the identified balancing needs. This creates concern among market players that in fact, the relevant activations could blur the lines between congestion management and balancing and distort price signals. The Commission recalls that the use of specific products should be limited to situations where operational security is at proven risk, they should not be activated for economic reasons.

The Commission understands that the margin levels are published, but market players consider that there is low visibility of the underlying methodology and made calls during the public consultation on the implementation plan to give generally more transparency on the purposes of calls for activation and to ensure that costs and benefits are fairly attributed to market participants. The Commission also invites the French authorities to develop a compensation model for infra-marginal bids of balancing responsible parties that are filtered by RTE.

Above all, price signals are weakened by the fact that the imbalance pricing is not based on marginal prices, but weighted average prices, A so-called "k factor" is applied which entails that market participants' effective remuneration is only known two years later. The absence of one single price of energy in real time reflecting marginal costs acts as a disincentive particularly towards emerging DSR actors and alternative sources of flexibility. In this regard, the Commission stresses that introducing scarcity pricing is the most important requirement towards ensuring efficient markets.

According to Article 6(8) of the Electricity Regulation, the procurement of balancing capacity must be based on a primary market unless and to the extent that the regulatory authority has

[12] See judgement of the Court of Justice of 17 July 2014 in Case C-553/12 P *DEI v Commission*, para. 46.

provided for a derogation to allow the use of other forms of market-based procurement on the grounds of a lack of competition in the market for balancing services. The Commission understands that the French regulator has granted a derogation, but required the launch of calls for tender combined with the implementation of the merit order and marginal prices for aFFR prior[13] to, and as a prerequisite for, the connection of RTE to the EU platform for exchanging of balancing energy from Frequency Restoration Reserve with automatic activation (PICASSO platform).

Imbalance settlement

The Commission takes note that the French authorities only plan to implement the 15-minute imbalance settlement period in 2025, i.e. at the latest possible moment until when a derogation from Article 8(4) of the Electricity Regulation is possible. It is also noted that France already envisages a derogation to the obligation to connect to the EU platform for exchanging of balancing energy from Frequency Restoration Reserve with manual activation (MARI platform) in mid-2022, and calls on the French authorities to speed up work and raise the ambition so that these measures can be implemented ahead of the operational launch of the MARI platform in mid-2022.

The Commission takes note of the views of the French authorities on the shortage pricing function. Article 44 of the Electricity Balancing Guideline describes an additional settlement mechanism separate from the imbalance settlement, to settle the procurement costs of balancing capacity, administrative costs and other costs related to balancing, preferably achieved with the introduction of a shortage pricing function. The Commission invites France to consider introducing a shortage pricing function as soon as possible but no later than 31 December 2022. Alternatively, France should set out another timeline in its final plan including explaining its reasons why the chosen timeline would be more appropriate.

In the Commission's view, when a shortage pricing function is implemented, it is important that this mechanism is well designed so that it does not only provide incentives for short term flexibility but also sends appropriate signals for investments to maintain system adequacy. France is invited to consider whether the price adder which the referred function creates in times of scarcity should apply not only to balance responsible parties but also to balance service providers which provide balancing energy to the TSO. The Commission also considers that the scarcity pricing function should be triggered by the scarcity of reserves in the system and it should be calibrated to increase balancing energy prices to the Value of Lost Load when the system runs out of reserves. Overall, the Commission takes the view that such a function should be considered by Member States whether or not a capacity remuneration mechanism has been adopted.

3. Interconnection capacity and cross-border trade

Interconnection targets

The Commission welcomes France's continued strong commitment to investing in reinforcing interconnection capacities.

[13] Decision of the French energy regulator dated 2 April 2020.

The Commission understands that France has no action plan in place and that the only derogation in place concerns the South-West Europe capacity calculation region for the year 2021. The Commission also understands that France expects to comply as from 2022 with the 70% target set out in Article 16 of the Electricity Regulation for a minimum capacity margin to be available for cross-zonal trade (MACZT), to be met by all transmission system operators on all critical network elements by 1 January 2020.

In this regard, the Commission notes that in the implementation plan[14] average percentage figures are provided and that RTE is reported to respect the 70% target in situations where the French regulatory authority deems that capacities are necessary, in particular where there is no price convergence. The Commission would like to refer to the methodology adopted by ACER in its 2019 Recommendation, complemented by a methodological paper, on how to estimate the minimum capacity margin to be made available for cross-zonal trade on each critical network element with contingencies. It follows that this margin must be monitored for all hours, and compliance with the binding 70% target cannot be made conditional upon efficiency considerations, when such conditionality is not provided for in the Regulation.

The French authorities are invited to ensure compliance with the 70% target in Article 16 by 2022 and to ensure that RTE provides at least the complete set of information on network elements considered in capacity calculation for all hours.[15] As indicated by ACER[16], specifically, for the hours when capacity is not limited by a network element, but by an allocation constraint or other limiting factor, TSOs should provide information on the network element that would have limited capacity calculation should such a constraint or limiting factor not have been applied.

Cross-border participation in the capacity mechanism

The Commission notes that the French authorities commit to implement, by the end of 2022, a procedure for the explicit participation of cross-border capacities in the French capacity mechanism. The Commission would like to point out that Article 26 of the Electricity Regulation requires capacity mechanisms to be open to such cross-border participation, and notes that according to the implementation plan it has not been possible to find an agreement with neighbouring countries to allow for an explicit participation.

In this regard, the Commission recalls that already in the state aid proceedings regarding the French capacity mechanism, the French authorities committed to implement a mechanism allowing for explicit participation in the French mechanism by cross-border generation capacities and demand-side response capacities. This commitment was conditional upon cooperation agreements with the transmission system operators in the neighbouring countries where participating capacities are located. In order to avoid resorting to implicit participation of cross-border capacities in the absence of such an agreement, the French authorities committed for the relevant interconnections be certified to enable them to participate in the

[14] The Commission also takes note that the regulator has published an updated report in May 2021 covering data for the second semester of 2020.

[15] The Commission understands that a more granular set of data has been provided to ACER after the first monitoring report of December 2020.

[16] ACER Report on the Result of Monitoring the Margin Available for Cross-Zonal Electricity Trade in the EU in the First Semester of 2020

mechanism directly, a solution that could be implemented without the support of other Member States. In its decision, the Commission emphasised that the timetable for implementing this remedy (actual implementation for delivery year 2019) must be considered a strict timetable and that France must inform the Commission about the various implementation stages of this remedy.

The Commission understands that France has made effort to implement a complete cross-border participation in the capacity mechanism, but given the time that has lapsed since the adoption of the state aid decision, the Commission recalls the commitment of the French authorities to apply an explicit participation. The state aid decision precedes the entry into force of the Electricity Regulation and France cannot avail itself of Article 26 of the Electricity Regulation to delay the implementation of its commitments until as late as the end of 2022. In any event, ACER approved rules for cross-border participation in electricity capacity mechanisms in December 2020.

4. Demand-side response, storage and self-consumption

Demand side response

France is among the more advanced Member States in allowing demand response and aggregators to participate in markets. Despite the market architecture being in place, volumes are stagnating and market participants report difficulties with market access.

The Commission welcomes the framework in place to allow the participation of DSR in the electricity spot market. However, the Commission stresses the importance of further removing any barriers to the participation of DSR in the reserves and balancing markets.

The Commission notes the recourse to state aid to fostering demand response in France and that the measures put forward in the implementation plan consists in prolonging such aid and even increasing its cap and timeframe. Whilst this opinion is not the place for the Commission to pronounce on the necessity and proportionality of such a state aid measure, the Commission invites the French authorities to carefully assess whether the market design – including the way in which balancing is activated and remunerated – entails shortcomings that do not allow for demand response to develop on market terms.

This assessment is particularly important given that the existing aid schemes were approved as temporary measures and with clear competition safeguards. The primary driver for market participation of DSR should be the electricity price and the abolishment of any market entry barrier.

In any event, an efficient support scheme should lead to increasing DSR volumes in capacity, but also in energy. The Commission therefore invites France to carefully monitor the volumes of energy effectively activated as persistently low energy volumes may be the sign of market barriers.

The Commission also notes the proposal of the French authorities to introduce measures to support implicit demand response developed by suppliers. Whilst the participation of demand response – including implicit demand response - in all markets is welcomed and encouraged, any further aid via calls for tenders targeting suppliers should not substitute general market rules based development of implicit demand. Among such measures, adapting settlement and reconciliation processes to 15-minutes metering for domestic consumers would enable suppliers to offer dynamic price contracts and thereby incentivise implicit demand response.

In this regard, the Commission invites the French authorities to carefully consider the need for a level playing field for actors engaged in demand response. Under Article 17(4) of the Electricity Directive it is possible to require electricity undertakings or participating final customers to pay financial compensation to suppliers if the latter are directly affected by demand response activation. However, such a financial compensation must not create a barrier to market entry for market participants engaged in aggregation.

The Commission invites the French authorities to verify that the level and modalities of application of the compensation do not act as an entry barrier, that it is fairly computed and fairly supported by market actors, and to ensure more generally that there are no regulatory distortions that would impede the development of competitive DSR.

Moreover, any technical barriers hampering the development of DSR should be carefully analysed and removed, in particular regarding the technical requirements for metering and settlement of volumes.

Finally, France applies a minimum bid size of 1 MW for trade in day-ahead and intraday markets. To allow for the effective participation of demand-side response, energy storage and small-scale renewables, including direct participation by customers, Article 8(3) of the Electricity Regulation provides that nominated electricity market operators must provide for minimum bid sizes of 500 kW or less.

Storage

The Commission welcomes the proposed measures for the further integration of storage, and the facilitation of its participation on the balancing market, also through aggregation.

Self-consumption

The Commission welcomes the legal framework in place to facilitate individual and (extended) collective self-consumption.

The extended collective self-consumption allows for self-consumption and electricity sharing within a radius of one kilometre in urban areas and ten kilometres in rural areas. The plan mentions in this regard that this will enable citizen and renewable energy communities to share electricity produced by the installations owned by the community.

The Commission notes that, in accordance with Article 16 of the Electricity Directive and Article 22 of the Renewable Energy Directive, citizen and renewable energy communities should be allowed to arrange within the community the sharing of electricity and renewable energy that is produced by the production units owned by the community, irrespective of a kilometre radius. This is particularly relevant for citizen energy communities, given that the definition in Article 2 (11) of the Electricity Directive does not impose a geographical limitation, in contrast to the definition in Article 2 (16) of the Renewable Energy Directive for renewable energy communities.

For renewable energy communities, France should furthermore take into account that the geographical limitation relates to the members in effective control, which need to be located in proximity of the production installations owned by the community. This geographical limitation should not be equated with the one imposed for collective self-consumption, as renewable energy communities can also engage in other activities, such as supply and aggregation.

As regards the fixed purchase tariffs, the Commission recalls the right for renewable self-consumers to receive remuneration for the self-generated renewable electricity fed into the grid which reflects the market value of that electricity, set out in Article 21 (2) (d) of the Renewable Energy Directive. Whilst a support mechanism for renewable self-consumers in this regard is not necessarily excluded, the Commission encourages France to ensure suppliers offer buy-back contracts to renewable self-consumers to reflect the market value of the electricity.

5. Retail markets and regulated prices

The Commission takes note of the fact that France does not provide any measures to remove regulated retail prices. The Commission would like to recall that Article 5 of the Electricity Directive only provides for the possibility to apply regulated prices to customers other than energy poor and energy vulnerable consumers during a transitional period, to establish effective competition for electricity supply contracts between suppliers and to achieve fully effective market-based retail pricing of electricity. The Directive also specifies that price regulation constitutes a fundamentally distortive measure; consequently, Member States should apply other policy tools, in particular targeted social policy measures, to safeguard the affordability of electricity prices[17].

It is noted that on the one hand, the French authorities intend to continue to have a system of regulated retail prices during an undetermined period, without any intention to phase out price regulation measures. On the other hand, the retail market is described as competitive, with an emphasis on the number of customers leaving regulated prices and the emergence of new suppliers who have increased their market shares, and of competitive offers. In view of the wording of Article 5 and the distortive effects of retail price regulation on competition in the market, the Commission does not share the view of the French authorities that it is possible to reconcile “blanket” price regulation applicable to all microenterprises and all households with a reportedly competitive retail market.

As established by constant jurisprudence, retail price regulation is, by nature, an obstacle to the internal energy market[18], and this obstacle remains even if the regulated retail prices are

[17] See Recital 22 of the Electricity Directive.

[18] See for example C-121/15 *ANODE*, paragraph 33: “Article 3(1) of Directive 2008/73 must be interpreted as meaning that intervention by a Member State consisting in requiring certain suppliers, including the incumbent supplier, to offer to supply natural gas to final consumers at regulated tariffs **constitutes by its very nature an obstacle to the achievement of the internal market** in natural gas as provided in that provision, and **that obstacle exists even though the intervention does not preclude competing offers from being made at lower prices than those tariffs by any supplier** in

contestable by competitors. There are also other factors than the level of the regulated prices that can distort competitive dynamics. Where an undertaking is designated as provider of regulated prices, this entails intangible benefits, notably in terms of perceptions around the reliability of its brand (provider of "public services"). Issues also arise where the undertakings, under the same brand and using the same staff and assets, provides offers of both regulated and non-regulated prices.

The Commission notes that these dynamics may well be present in the French market. Indeed, EDF has maintained a market share of around 70% among households despite the fact that a large majority of "free market" (non-regulated) offers are more competitively priced. EDF has also been able to capture a large part of the non-regulated segment, including among those customers that lost eligibility to regulated prices on the occasion of the last legislative amendment where eligibility was limited to households and microenterprises.

Regarding the contestability of the level of the regulated retail prices, Article 5(7)(c) of the Electricity Directive requires regulated prices to be set above cost, at a level where effective price competition can occur. In this regard, the Commission would like to note that it has received, in the public consultation on the implementation plan but also outside this process, several submissions regarding alleged lack of contestability of the regulated retail prices, which has also been a matter for litigation in France. Of particular concern to stakeholders are the methodology used for estimating the costs of procuring electricity "hors ARENH" and the advantages (brand and economies of scale) that the incumbent enjoys when it comes to commercialisation costs. The Commission invites the French authorities to pay particular attention to ensuring that competing suppliers are not margin squeezed.

Finally, in accordance with Article 5 (7) (e), Member States must ensure that customers under regulated prices are directly informed at least every quarter of the availability of offers and savings. Also noting the number of customers who stayed with the incumbent[19] on its "*offre de bascule*" upon losing their eligibility to regulated prices from 1 January 2021, the Commission encourages the French authorities to consider a more proactive outreach to consumers in the form of public information campaigns[20].

Overall, the Commission invites the French authorities to assess in depth the impact of the regulated prices on the retail market, including on the incentives for demand response and active participation of consumers in the market. In the light of the reported increasing intensity of competition, the Commission invites the French authorities to reduce accordingly the scope of such retail price regulation and to limit its duration to a transition period, whilst having regard to the specific needs of energy poor and energy vulnerable consumers.

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the market" (emphasis added). The effect of regulated retail prices in the electricity sector is the same as in the gas sector.

19 EDF and the entreprises locales de distribution

20 See CRE decision 2021-84 of 18 March 2021: « However, it can be noted that no large scale communication has been carried out by the public authorities and that the powers of the Energy Regulation Commission and of the National Energy Mediator are very limited in this area ».

IV. CONCLUSION

Pursuant to Article 20(5) of the Electricity Regulation, the Commission invites France to amend its implementation plan to take utmost account of the above comments of the Commission. France is invited to publish its amended plan within three months and inform the Commission.

Pursuant to Article 20(6) of the Electricity Regulation, France shall monitor the application of its implementation plan and shall publish the results of the monitoring in an annual report and submit that report to the Commission. In this report, France is invited to explain whether and to what extent the market reforms have been implemented according to the planned timeline, and if not explain the reasons why.

The Commission's position on this particular notification is without prejudice to any position it may take on the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained therein to be confidential. France is invited to inform the Commission within ten working days following receipt whether and why they consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which they wish to have deleted prior to such publication.

Done at Brussels, 27.8.2021

For the Commission

Kadri Simson
Member of the Commission